

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

HAROLD STAFFNEY,

Plaintiff,

v.

Case Number 12-10524  
Honorable Thomas L. Ludington

C/O LEWIS et al.,

Defendant.

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**ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION**

On February 7, 2012, Plaintiff Harold Staffney filed a pro se civil rights complaint and an application to proceed without prepayment of fees or costs pursuant to 28 U.S.C. § 1915(a)(1). On February 27, 2012, the complaint was dismissed without prejudice because of the “three strikes” provision of the Prison Litigation Reform Act of 1995. *See* 28 U.S.C. § 1915(g). This statute requires a federal court dismiss a civil case where the prisoner seeks to proceed without prepayment of the filing fee if, on three or more previous occasions, a court has dismissed the prisoner’s action because it was frivolous, malicious, or failed to state a claim upon which relief may be granted. This requirement does not apply, however, if “the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). The Court noted that Plaintiff has filed at least six prior civil actions which have been dismissed as frivolous or for failure to state a claim upon which relief may be granted. The Court further noted that Plaintiff does not allege he is “under imminent danger of serious physical injury.” Accordingly, the complaint was dismissed.

Plaintiff now moves for reconsideration asserting that his claim is not brought pursuant to 42 U.S.C. § 1983, but rather 42 U.S.C. § 1985. ECF No. 9. Contrary to Plaintiff’s contention,

28 U.S.C. § 1915(g) does not distinguish between the two sections. *Dubuc v. Oklahoma*, 36 F. App'x 394, 394–95 (10th Cir. 2002). Rather, § 1915(g) provides that its three strike provision applies to a “civil action” brought by prisoners regardless of the theory of relief, “unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). In his motion for reconsideration, Plaintiff does not contest that he has filed at least six prior civil actions which have been dismissed as frivolous or for failure to state a claim upon which relief may be granted. He does not allege he is “under imminent danger of serious physical injury.”

Accordingly, it is **ORDERED** that the motion for reconsideration (ECF No. 9) is **DENIED**.

Dated: March 16, 2012

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon Harold Staffney, 122425 at Kinross Correctional Facility, 16770 S. Watertower Drive, Kincheloe, MI 49788 by first class U.S. mail on March 16, 2012.

s/Tracy A. Jacobs  
TRACY A. JACOBS